No. 15365

IN THE

United States
Court of Appeals
For the Ninth Circuit

SHELL OIL COMPANY, a Corporation,

Appellant,

vs.

LANUS WAYNE PRESTIDGE,

Appellee.

PETITION FOR REHEARING

CLAUDE V. MARCUS,
Boise, Idaho

BLAINE F. EVANS,
Boise, Idaho

GRANT C. AADNESEN,
Salt Lake City, Utah
Counsel for Appellant

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PETITION FOR REHEARING

Shell Oil Company, appellant above named, respectfully petitions this Honorable Court for a rehearing of the appeal in the above entitled cause. In support of this petition for rehearing appellant represents to the Court as follows:

I

Appellant reserves its argument and position with respect to each of the submitted errors on appeal, but addresses itself to those points of the decision wherein, it is submitted, the Court should be persuaded that its decision is based upon incorrect principles of

law and upon the incorrect application of principles of law.

II

The decision of this Court, in holding that the contract between Shell Oil Company and Rocky Mountain Oil Company, two totally unrelated corporations, constituted a joint adventure as a matter of law totally demolishes the independent character of a contract that has become ordinary in the oil and gas industry. To sustain its conclusion the Court relies, principally, upon the cases of Stearns v. Williams, 72 Idaho 276, 240 Pac. 2d 833; and Rae v. Cameron (Mont). 114 Pac. 2d 1060. The Court clothes the instant decision with general statements made in the above cited cases although the facts in those cases are totally dissimilar from the facts in the instant case. In Stearns v. Williams, a husband and wife had bought property upon which they intended to conduct a business to be owned and operated by them. The question of joint venture was not a litigated question in the case. Admittedly, they were engaged in a joint venture with all the necessary elements including joint control. In Rae v. Cameron, one contracting party advanced money to conduct certain tests. The agreement provided that if the test was successful, both parties would organize a corporation, each holding half the stock, and would thereafter carry on the enterprise through the corporation. Such facts are very much at variance with the facts in this case.

All controlling decisions on the question of joint venture hold that joint control of the project must exist before a joint venture can be found. The Court in the instant case cites certain provisions of the contract as showing joint control. These include the provisions requiring the well to be drilled to a certain depth, to a depth sufficient to test a certain formation, and providing that the drilling would be stopped if both parties determined that further drilling was not warranted. It is respectfully suggested that such provisions relate to a *controlled result* but not *control of the work done to obtain such result.*

To support its decision that joint control existed the Court holds that the geologist, whose only duty was to collect samples, controlled the work being done. The geologist was never at the job site until the morning of the occurrence and work had not even started at that time. It is our position that a fair interpretation of the evidence showed the geologist had no authority over the work being done. The Court in its decision states: "True, these occasions were after the accident happened, but the geologist was at the site when the accident happened and *there is no showing that his authority was any less before the accident than it was after.*" (Emphasis ours.) The burden was on the plaintiff to show the authority of the geologist over the work, if any existed; there was no evidence showing authority of the geologist prior to that time and yet the Court uses the failure of the plaintiff to show such authority

as a basis for sustaining the position of the plaintiff in this case.

We again refer to the decisions cited in the brief of appellant construing contracts similar to the "farm-out" agreement involved in this case. The Court has apparently ignored those decisions and has based its decision upon an extension of the joint venture definition to a factual situation which is weaker than any factual situation involved in cases cited by the Court in supporting its decision. The decision of this Court jeopardizes the relationship of parties under any contract involving a controlled contract result. It is our thought that perhaps the Court did not contemplate the chaos and uncertainty which its decision will and has caused in the oil and gas industry within the Ninth Circuit area. Under this decision "farm-out" oil and gas well drilling contracts are ended as independent contracts.

III

The Court has not fully considered the fact that appellant had no rights in the lease on the property where the drilling was being done at the time of the accident. The date of the accident was June 1, 1954. The Government lease on this land expired for non-payment of rent February 1, 1954. The appellant had no legal rights in this lease until ten days after the accident happened when the Rocky Mountain Company agreed its new lease on the property would be subject to the contract with Shell. It is urged that this fact did not retroactively make Shell liable for

the negligence of Rocky Mountain Oil Company occurring prior to such reinstatement.

It is upon the above stated grounds and those heretofore presented to the Court that appellant urges this Court to grant a rehearing and re-examine the issues involved in this case.

Respectfully submitted,

CLAUDE V. MARCUS
Boise, Idaho

BLAINE F. EVANS
Boise, Idaho

GRANT C. AADNESEN
Salt Lake City, Utah

By Claude V. Marcus
625 First National Bank Bldg.,
Boise, Idaho
Attorneys for Appelllant and Petitioner

STATE OF IDAHO)
COUNTY OF ADA) ss.

CLAUDE V. MARCUS being first duly sworn on oath certifies and says:

That he is one of the attorneys for appellant in this cause; that he makes this certificate in compliance with Rule 23 of the Rules of the United States Court of Appeals for the Ninth Circuit; that, in his judgment, the within and foregoing Petition for Rehearing is well founded and is in no way interposed for the purpose of delay.

Claude V. Marcus

SUBSCRIBED and SWORN to before me at Boise, Idaho this 3rd day of December, 1957.

Harry A. Kessler

Notary Public for Idaho
Residing at Boise, Idaho.